

**BEFORE THE
PHYSICAL THERAPY BOARD
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation)
Against:)
)
Christian J. Pacheco)
)
)

)

Case #: 1D 2000 62682

The foregoing Proposed Decision, in case number 1D 2000 62682, is hereby adopted by the Physical Therapy Board, Department of Consumer Affairs, State of California.

This decision shall become effective on the 13th day of June, 2002.

It is so ordered this May 14, 2002 .

Original Signed By: _____
Don A. Chu, P.T., President
Physical Therapy Board of California

BEFORE THE

PHYSICAL THERAPY BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the)	
Statement of Issues Against:)	Case No. 1D 2000 62682
)	
CHRISTIAN JOSEPH PACHECO)	OAH Case No. L-2001110590
2217 Baltic Avenue)	
Long Beach, CA 91301)	
)	
Respondent.)	
_____)	

ORDER CORRECTING TEXT OF PROPOSED DECISION

On March 20, 2002, Administrative Law Judge Samuel Reyes (“ALJ”) of the Office of Administrative Hearings issued a proposed decision in the above-captioned case. On March 27, 2002, Elsa Ybarra, on behalf of the Physical Therapy Board of California (“agency”), faxed a memorandum (incorrectly dated February 1, 2002) to Rosario Magalit, an employee of the Office of Administrative Hearings. In the memorandum, Ms. Ybarra asked Magalit to make specified corrections to the proposed decision. A copy of the affected page of the proposed decision with the suggested corrections was attached to the memorandum.

The suggested correction to the proposed decision are as follows: (1) The respondent’s zip code in the case caption is incorrect and must be changed to “90810”, and (2) the reference to the term “Accusation” in paragraph 1. of the Factual Findings should be changed to “Statement of Issues”.

GOOD CAUSE appearing, the following Order is issued:

1. The corrections suggested by the agency are authorized pursuant to Government Code Section 11517(c)(2)(C).
2. The affected page of the proposed decision is hereby corrected in the manner the agency suggests.
3. This order and the agency’s memorandum (with attachment) are hereby made a part of the record in this case.
4. The agency shall serve respondent with the original proposed decision, a copy of this Order, and the agency’s memorandum with attachment, at the time it serves

respondent with a copy of the corrected proposed decision or the final decision in this case, whichever is earlier.

5. The fact that the original proposed decision is corrected does not mean that the original disappears. The original proposed decision and the corrections are public documents that the agency must serve on respondent pursuant to Government Code Section 11517(C)(1).

IT IS SO ORDERED.

Dated: April 15, 2002

Original Signed By: _____
Janis S. Rovner
Administrative Law Judge
Office of Administrative Hearings

JSR: sp

BEFORE THE

PHYSICAL THERAPY BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the)	
Statement of Issues Against:)	Case No. 1D 2000 62682
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Long Beach, CA 91301)	
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Respondent.)	
_____)	

PROPOSED DECISION

This matter was heard by Samuel D. Reyes, Administrative Law Judge, Office of Administrative Hearings, on January 22, 2002, in Los Angeles, California.

Amy Fan, Deputy Attorney General, represented Steven K. Hartzell (Complainant).

Respondent represented himself.

Complainant seeks to deny Respondent's application for licensure on the bases of his criminal conviction and of the conduct underlying the conviction. Respondent denies engaging in the conduct that led to the conviction and blames his criminal attorney for his false conviction.

Oral and documentary evidence was received at the hearing. The record was left open for the submission of additional evidence by the parties and for the submission of written argument. On February 14, 2002, Complainant submitted certified copies of the criminal complaint, the mandate from the Circuit Court, Escambia County, Florida, and the criminal docket; the documents have been collectively marked as Exhibit 11. Respondent did not submit any evidence by the February 19, 2002, deadline. Nor did he submit any evidence, argument, or objection to the receipt of Exhibit 11 by the deadline set for closing argument, March 18, 2002. Accordingly, Exhibit 11 is received into evidence. The matter was submitted for decision on March 18, 2002.

FACTUAL FINDINGS

1. Complainant filed the Accusation in his official capacity as Executive Officer, Physical Therapy Board of California (Board).

2. Respondent filed an application for licensure on March 5, 2001, the date received by the Board. The Board denied the application on May 3, 2001, citing as the bases Business and Professions Code sections 480(a)(1) (conviction of a crime) and 480(a)(3) (act which if done by a licensee constitutes basis for suspension or revocation of a license).

3. Police in Pensacola, Florida, arrested Respondent on May 26, 2000. A witness claimed to have seen Respondent masturbating in the beach on May 18, 2000, for approximately five minutes. He denied engaging in the conduct.

4. On August 2, 2000, an Assistant State Attorney charged Respondent with violation of Florida Statutes section 800.03 (indecent exposure in a public place) and section 798.02 (lewd and lascivious behavior).

5. A trial by jury was held on August 28, 2000, in the County Court, Escambia County, Florida, in the matter entitled *State of Florida vs. Christian Joseph Pacheco*, Case number 00-23870-MMA-41. The jury found Respondent guilty as charged. The County Court sentenced Respondent to serve 30 days in county jail, to pay \$661 in fines and costs, to undergo psychological evaluation and, if necessary, psychological counseling.

6. The Circuit Court, First District, Escambia County, Florida, affirmed the conviction on November 28, 2001.

7. The conviction involves crimes that are substantially related to the qualifications, functions and duties of a Board licensee. The conviction reflects poorly on respondent's judgement, which is essential for the discharge of his duties as a physical therapist.

8. Respondent denied engaging in the conduct he was accused of. He admitted being in the bluffs above the beach and greeting the complaining witness, but denies exposing himself or engaging in masturbation. Complainant presented the police report in which the complaining witness stated that she had observed Respondent masturbating in the beach on May 18, 2000, for approximately five minutes. She did not testify at the hearing. The transcript of proceedings from the Florida case was not introduced into evidence. In the existing circumstances, the statements attributed to the witness constitute hearsay and are insufficiently reliable or persuasive to support a finding regarding the conduct underlying the conviction.

9. Respondent served 30 days in county jail and complied with the terms of his sentence.

10. Respondent attended school in his native Philippines and obtained a Bachelor's degree in physical therapy in 1994 from De La Salle University, where he later worked for approximately 2½ years as a faculty member. He came to the United States in September 1996.

11. Respondent obtained his physical therapist license in Florida in November 1996. The license has remained in good standing and expires in November 2003.

12. Respondent has worked as a physical therapist in Florida since September 1996, except for the period of August 2000 to July 2001 in which he lost his job following his incarceration and in which he sought to establish residency in California. He testified he has discharged his obligations as a physical therapist in a satisfactory manner. He submitted letters from four patients satisfied with the care he provided them.

13. He lost his job following the conviction and came to California in November 2000 to live with an aunt. He returned to Florida in June 2001 following denial of a physical therapist license by the Board. He is again working as a physical therapist in Florida but would like the option of returning to California.

14. Respondent has been married for 11 years and has two children, a seven-year-old daughter and a son ten-year-old son.

15. Except for those previously addressed in this Decision, all other allegations in the accusation are found to be unproved or surplusage.

LEGAL CONCLUSIONS

1. Cause exists to deny respondent's application pursuant to Business and Professions Code section 480(a)(1) because he was convicted of a crime substantially related to the qualifications, functions and duties of a physical therapist, 4 through 7.

2. All evidence presented in mitigation or rehabilitation has been considered, including the satisfactory discharge of physical therapist duties in the State of Florida and the lack of any other criminal record. However, after weighing this evidence against the recent conviction and taking into account respondent's burden of proof, denial of licensure is appropriate at this time.

ORDER

Respondent's application for licensure as a physical therapist is denied.

DATED: 03/20/02

Original Signed By: _____
SAMUEL D. REYES
Administrative Law Judge
Office of Administrative Hearings